

UT 00-2

Tax Type: Use Tax

Issue: Use Tax on Aircraft Purchase

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

v.

**ABC AVIATION LLC,
TAXPAYER**

No.
IBT
NTL

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Special Attorney General Gary Stutland on behalf of the Illinois Department of Revenue; Charles F. Thomas, Esq. and James Allen, Esq. of Hinshaw & Culbertson, on behalf of ABC Aviation LLC.

Synopsis:

This matter comes on for hearing pursuant to the protest by ABC Aviation LLC (the “taxpayer”) of Notice of Tax Liability No. XXXXX issued by the Illinois Department of Revenue (hereinafter referred to as the “Department”) for use tax on the purchase of a 1981 Beechcraft aircraft by the taxpayer. Pursuant to a prehearing order, the parties identified the issue to be resolved at hearing as “whether the taxpayer’s purchase of a certain aircraft, namely, a 1981 King Air B200, Serial No. XXXX, Registration No. XXXXX, is taxable under the Retailers’ Occupation Tax Act and/or the

Illinois Use Tax Act.” After a review of the record and the evidence adduced at the hearing, it is my recommendation that this matter be resolved in favor of the Department.

Findings of Fact:

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a use tax and related tax liabilities. Dept. Ex. No. 1.
2. Taxpayer is a limited liability corporation located in WHEREVER, Illinois. Dept. Ex. No. 1.
3. XYZ Aeronautics, Ltd. (“Aeronautics”) is a corporation located in Tennessee. Dept. Ex. No. 1.
4. Taxpayer entered into an “AIRCRAFT PURCHASE AGREEMENT” (“Agreement”) to purchase a 1981 Beechcraft King Air B200, serial number XXXX (“Aircraft”) from Aeronautics for \$1,112,500 on October 16, 1996. Tr. pp. 39, 41; Taxpayer’s Ex. No. 1.
5. The Agreement was signed on behalf of Aeronautics, by JOHN DOE. Taxpayer’s Ex. No. 1.
6. The Agreement was signed by the taxpayer and Aeronautics at the WHEREVER Airport in WHEREVER, Illinois. Tr. p. 32.
7. Aeronautics was not a registered aircraft dealer at the time it entered into the Agreement. Tr. pp. 22, 23.
8. Taxpayer accepted delivery of the Aircraft in WHEREVER, Illinois on the date the AIRCRAFT PURCHASE AGREEMENT was signed. Tr. pp. 31, 32.

9. ZZ Flight Management, LLC (“ZZ”) is a corporation located in Tennessee. Dept. Ex. No. 1.
10. ZZ purchased the Aircraft from MMM, Inc. on January 24, 1996 and owned it until November 12, 1996. Dept. Ex. No. 1.
11. ZZ executed an AIRCRAFT BILL OF SALE provided by the United States Department of Transportation Federal Aviation Administration pursuant to which the Aircraft was sold to the taxpayer on November 12, 1996. Dept. Ex. 1.
12. ZZ was a registered aircraft dealer with the State of Tennessee at the time it sold the Aircraft to the taxpayer. Tr. p. 14; Dept. Ex. No. 1.
13. Aeronautics did not hold title to the Aircraft on the date the Agreement was signed. Tr. pp. 7, 8, 22.
14. In accordance with the terms of the Agreement, the taxpayer placed a \$50,000 refundable deposit in escrow with Ms. Jane Doe of Aircraft Title Service, Oklahoma City, Oklahoma. Tr. p. 43. Dept. Ex. No. 1.
15. Insured Aircraft Title Service was retained to insure that the taxpayer would obtain free and clear title to the Aircraft. Tr. p. 44.
16. Prior to its purchase of the Aircraft, taxpayer made other aircraft purchases, and retained Insured Aircraft Title Service in connection with such purchases. Tr. pp. 43, 44.
17. The taxpayer could have determined the titleholder of the Aircraft by obtaining a copy of the title policy from Insured Aircraft Title Service, but did not do so. Tr. p. 45, 46.

18. On November 8, 1996, John Doe, on behalf of Aeronautics, authorized Jane Doe to release the \$50,000 in escrow for the Aircraft. His letter states that “(U)pon receipt of similar authorization form the depositor, ABC Development of WHEREVER, Illinois, please wire transfer the total amount to...National Bank of Commerce...Memphis, Tennessee...For: ZZ Flight Management.” Dept. Ex. No. 2.
19. A copy of Mr. Doe’s November 8, 1996 authorization to Jane Doe was directed “cc: ABC Development”. Dept. Ex. No. 2.

Conclusions of Law:

The issue in this case is whether the taxpayer’s purchase of the Aircraft qualifies for the occasional sale exemption set out in statutory and regulatory provisions of the Illinois Use Tax Act (35 ILCS 105/1 *et seq.*). Illinois imposes a tax on the privilege of using tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. An exception to this tax is provided when the purchase is made from an individual who only engages in isolated or occasional sales of such property. 35 ILCS 105/2. This exception is available when the selling individual does not hold himself out as being engaged or does not habitually engage in selling such tangible personal property at retail. *Id.*

The taxpayer argues that the purchase of the Aircraft is covered by the above exception to the use tax. The Department has established its *prima facie* case that the taxpayer is subject to Illinois use tax by submitting the SC-10-K Corrected Return. Section 12 of the Use Tax Act (35 ILCS 105/12) incorporates by reference section 4 of the Retailers’ Occupation Tax Act (35 ILCS 120/4) which provides that the Correction of Return issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due as shown therein. Even if the taxpayer produces

sufficient evidence to overcome the *prima facie* case, a taxpayer claiming to be exempt from tax has the burden of proving by clear and conclusive evidence that it is entitled to such an exemption. See Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305, 310 (1976).

The taxpayer argues that it should not be considered a retail purchaser under Illinois law. In support of this position, the taxpayer offered testimony and evidence that it entered into a contract to purchase the Aircraft with Aeronautics (Tr. pp. 39, 41), that Aeronautics was not an aircraft dealer (Tr. pp. 22, 23) and that Aeronautics appeared to be the owner of the aircraft (Tr. p. 6).

All of the evidence regarding the sale of the Aircraft, including the AIRCRAFT BILL OF SALE and the testimony of the Department's auditor (Tr. p. 19), which is not disputed by the taxpayer (Tr. p. 37) indicates that the taxpayer acquired the aircraft from ZZ, a registered aircraft dealer with the state of Tennessee. When a buyer purchases a product for use or consumption from a seller who is in the business of selling the product, the buyer has purchased the product from a retailer for purposes of the Illinois Use Tax Act. See Mobil Oil Corp. v. Johnson, 93 Ill. 2d 126 (1982). The fact that the Aircraft was purchased from a registered dealer of aircraft indicates that the dealer was habitually engaged in the sale of aircraft, or held itself out as engaged in this business, and therefore could not make an isolated or occasional sale of the Aircraft to the taxpayer. 35 ILCS 105/2. The taxpayer has offered no credible evidence to the contrary to overcome the Department's *prima facie* case or to satisfy its own burden of proving by clear and convincing evidence that it is entitled to an exemption.

The taxpayer seeks to rely upon a "presumption" that Aeronautics was the "owner" of the Aircraft when the taxpayer entered into the Agreement with Aeronautics

to purchase it (Tr. pp. 7,8). However, this “presumption” was rebutted by credible evidence establishing that the Aircraft was owned by ZZ at that time. *See* Dominick v. Behrends, 130 Ill. App. 2d 726 (1970), *quoting* McElroy v. Force, 38 Ill. 2d 528 (1967) (“Stated differently, the presence of a presumption in a case only has the effect of shifting to the party against whom it operates the burden of going forward and introducing evidence to meet the presumption. If evidence is introduced which is contrary to the presumption, the presumption will cease to operate”).

There is no exception to the application of the use tax where the purchaser purchases tangible personal property from a retailer but does not intend to buy from a retailer. Whether the seller is a retailer is a factual matter. *See* Franklin County Coal Co. v. Ames, 359 Ill. 178 (1934). The purchaser’s intention does not change the facts.

WHEREFORE, for the reasons stated above, it is my recommendation that the Notice of Tax Liability be upheld.

Ted Sherrod
Administrative Law Judge

Date: August 11, 2000